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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,148	03/29/2004	Gary W. James	METZ 2 00011	2979

27885 7590 12/28/2006
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44114

EXAMINER

GABLER, PHILIP FRANCIS

ART UNIT	PAPER NUMBER
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3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/812,148	Applicant(s) JAMES ET AL.	
	Examiner Philip Gabler	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,9 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,9 and 14-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 November 2006 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5, 6, 9, and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (US Patent Number 3168365) in view of Wise (US Patent Number 2911275) and Vargo (US Patent Number 4553725).

4. Regarding claims 1 and 17 Evans (Figures 3-5) discloses a cabinet comprising: a first side wall (12); a first support member (47), wherein the support member includes a first leg (viewed as A in Exhibit 1, note that legs of support members are shown best in Figure 4 of element 17, which is equivalent to 47) extending at least substantially

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normal to the first side wall and a second leg (B) extending from the first leg spaced from and at least substantially parallel to the first side wall; a second side wall (13) positioned opposite the first side wall; a third wall (11) interconnecting the first and second side walls; a base wall (not shown, but inherent in a cabinet structure, located opposite top surface D) interconnecting the first, second and third walls, and a second support member (17) extending from the third wall, the second support member is positioned at substantially the same height from the base wall as the first support member, the second support member includes a first leg extending at least substantially perpendicular to the third side wall and a second leg extending from the first leg spaced from and at least substantially parallel to the third side wall; and a removable shelf (20) including a planar surface and a first flange (21) depending substantially perpendicular from the planar surface, and the shelf includes a second flange (24) depending substantially perpendicular from the planar surface. Evans discloses an alternate support member on the first and second side walls and does not disclose support members punched through walls, or hemispherical dimples or openings in shelf flanges to receive them. Wise (Figures 1 and 8) discloses support members (14) punched out of opposite side walls such that an opening (behind 14) is formed through a side wall. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to punch the Evans' support members directly from the walls as taught by Wise rather than adding a separate support member containing strip because this would reduce the number of parts and the complexity of manufacture of the cabinet. Vargo (Figures 1 and 3) discloses a shelving system including support members (12) on

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opposite side walls for supporting opposite sides of a shelf (see for example column 4 lines 59-62) and having first (at 58) and second (42) legs, the second leg including a substantially hemispherical dimple (94) formed in a straight portion of the second leg and extending towards an inner surface of a side wall to be received in an opening (88) in a flange (86) of a shelf and provide a frictional fit (see for example column 4 lines 40-42 describing spring biased action). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include dimples and receiving openings as taught by Vargo in Evans' support members because this arrangement would help prevent accidental removal of the shelves. Note that the shape of Vargo's openings is not disclosed; however, Vargo discloses various circular openings (34, etc.) and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a circular opening (88) for mating with the dimple (94) to insure a tight and secure fit with the circular dimple. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to include similar support members (with first and second legs, and dimples) on the side walls of Evans' cabinet as taught by Vargo because this would ease manufacture by allowing a single type of support member to be used throughout the cabinet as opposed to Evans' alternate side supports.

5. Regarding claim 5, Evans, modified by Wise and Vargo as described above discloses a cabinet as recited in claim 1 but does not disclose a support member with a rounded upper edge. Vargo discloses a shelving system including support members with rounded upper edges (see Figure 1). Accordingly it would have been obvious to

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one of ordinary skill in the art at the time the invention was made to modify the support members of Evans' cabinet, previously modified by Wise and Vargo, to include rounded upper edges as taught by Vargo because this could ease assembly and assist in the installation of shelves.

6. Regarding claim 6, Evans further discloses the support member is a lance.

7. Regarding claim 9, material choice is a matter of preference and therefore given little patentable weight. Evans however, does disclose various components of the cabinet fabricated from metal (see column 2 line 20, column 2 lines 24-25, etc.).

8. Regarding claims 14 and 18, Evans further discloses a support wall (45) disposed between the first side wall and the second side wall in a first direction and the removable shelf and the base wall in a second direction.

9. Regarding claims 15, 16, 19, and 20, Evans does not specifically disclose a connection for the support wall to the base wall and removable shelf. However, he does disclose the use of lances for connecting elements (support wall to shelf 48 for instance) and it accordingly would have been obvious to one of ordinary skill in the art at the time the invention was made to use a lance connection for connecting the support wall to the base wall and removable shelf.

10. Regarding claim 21, Evans, as modified by Wise and Vargo as described above, discloses a third support member punched out of and extending from the third wall such that a third opening is formed through the third wall adjacent the third support member, the third support member is positioned at substantially the same height from the base wall as the first support member on the first wall, the third support member includes a

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first leg extending at least substantially perpendicular to the third wall and a second leg extending from the first leg spaced from and at least substantially parallel to the third wall, the second leg of the third support member includes a substantially hemispherical dimple extending towards an inner surface of the third side wall, and the removable shelf further including a third flange depending from the planar surface including a circular opening that receives the dimple of the third support member.

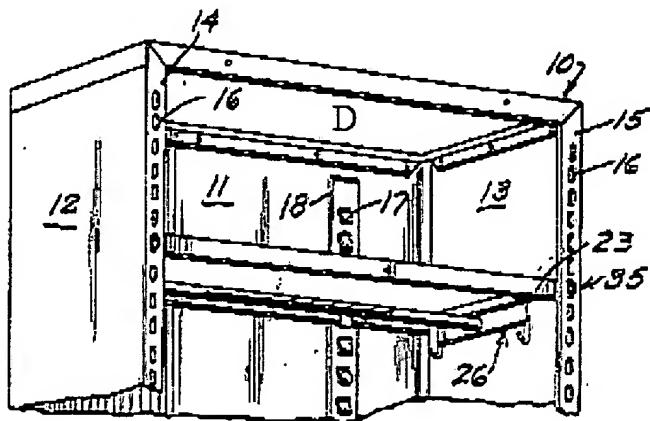


FIG. 3

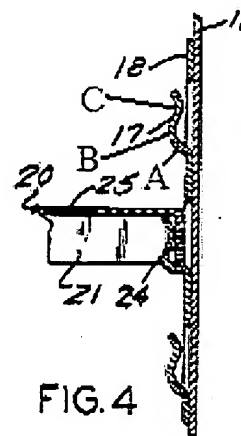


FIG. 4

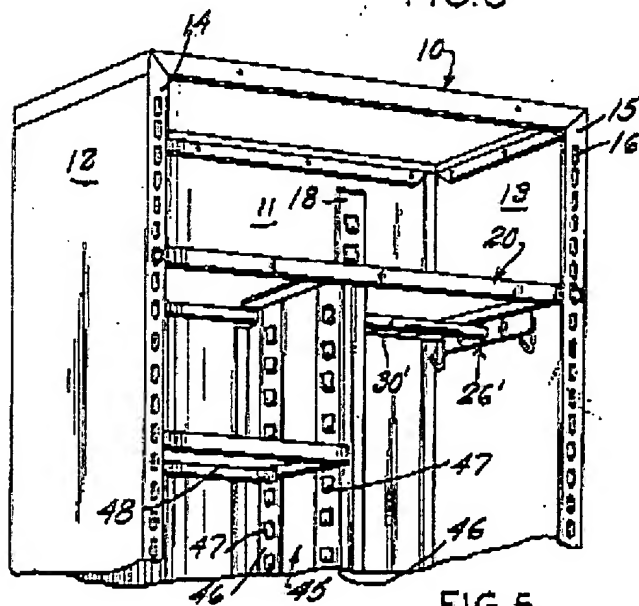
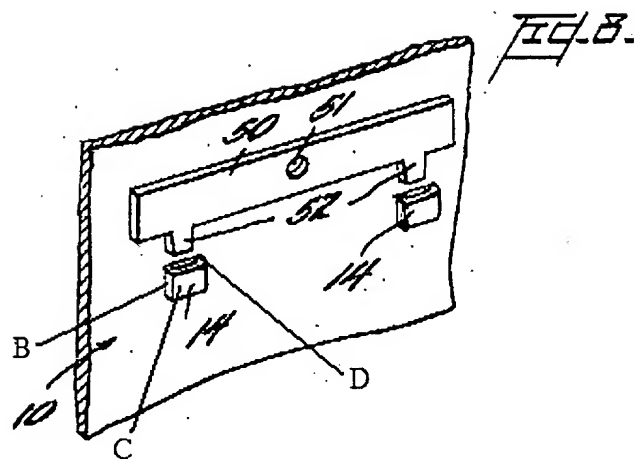
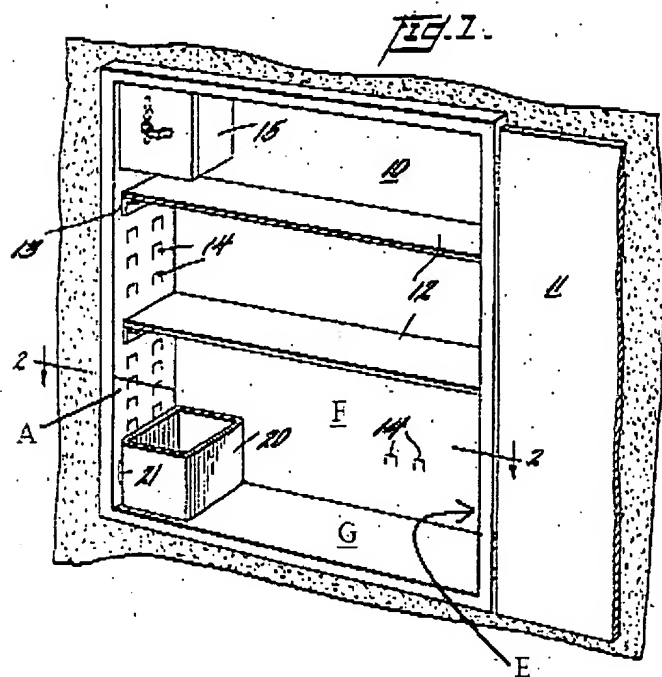


FIG. 5

Exhibit 1: Evans '365 Figures 3-5



Wise '275 Figures 1 and 8

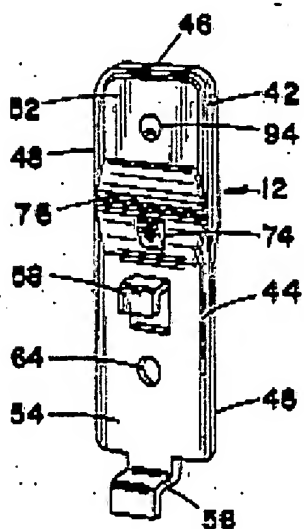


FIG. 1

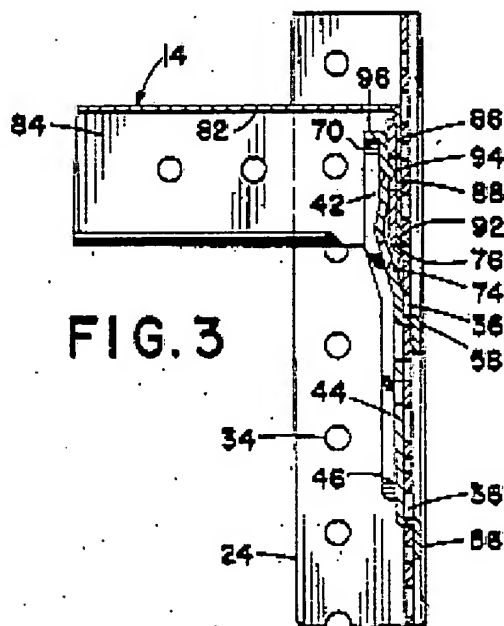


FIG. 3

Vargo '725 Figures 1 and 3

Response to Arguments

11. Applicant's arguments, see remarks, filed 14 November 2006, with respect to the 35 USC 112 claim rejections have been fully considered and are persuasive. The 35 USC 112 claim rejections have been withdrawn.

12. Others of Applicant's arguments filed 14 November 2006 have been fully considered but they are not persuasive. The finality of previous Office Action is viewed as proper. The new grounds of rejection presented in the action were indeed necessitated by Applicant's amendment, which presented combinations of limitations not previously presented. Although the limitations may have been previously presented in dependent claims, the particular combination presented in the amendment was new and required an additional reference to be cited.

13. The remainder of Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Suttles (US Patent Number 4201139), Klein (US Patent Number 4101108), and Perrault et al. (US Patent Number 4013253) references are cited for disclosing various aspects of the invention of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-

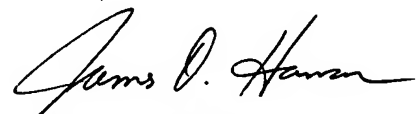
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6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PFG/16
12/18/2006


JAMES O. HANSEN
PRIMARY EXAMINER